IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE FOURTEENTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

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WRIT PETITION No.9290 of 2002

Between:

Dasari Bapanaiah, S/o. late Dasari Venkatadri, aged 76 years,

Business, R/o.25-1-117, Main Road, R. Agraharam, Guntur.

..... PETITIONER

AND

1. Municipal Corporation of Guntur, rep. by its Commissioner, Guntur.

2. Municipal Corporation of Guntur, rep. by its Town Planner, Guntur.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order of direction, preferably a writ in the nature of Mandamus declaring the action of the respondents in taking and demolishing the petitioner's property bearing Municipal No.25-1-117, Main Road, R. Agraharam, Guntur for road widening purpose otherwise than in due process of Law i.e. without acquiring the same under the provisions of the Land Acquisition Act and without paying sufficient compensation for the land and building of the petitioner and without notice as being arbitrary, without authority and violative of Articles 14 and 300-A of the Constitution of India and consequently direct the respondents not to take the property of the petitioner for road widening or any other purpose and also not to demolish the property of the petitioner.

Counsel for the Petitioner: MR. P. VENUGOPAL

Counsel for the Respondent No.1: MR.T.S.VENKATARAMANA

The Court made the following:

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ORDER:

The petitioner alleges that he is the owner of the house bearing Door No.25-1-117 situated at Main Road, R. Agraharam, Guntur. In the earlier writ petitioner being W.P. No.24313 of 2000 filed by him, directed the respondents to follow due process of law and also guidelines laid down by a Division Bench of this Court. But the respondents without following the said directions against visited the locality on 12.5.2002 i.e., one day prior to the date of filing of this writ petition, and marked to demolish his entire house for the purpose of road widening. Even as per the master plan, the property of the petitioner does not attract for the purpose of road widening and the proposed 60 feet road is contrary to the master plan. Therefore, the petitioner submits that any such action without due process of law under the provisions of the Hyderabad Municipal Corporations Act, 1955 or the Land Acquisition Act, 1894 or other laws is arbitrary and illegal.

In the counter affidavit filed by the first respondent, it is stated that the Corporation has complied with the directions issued by this Court in the earlier writ petition being W.P. No.24313 of 2000 by issuing the Notice and accordingly prepared the Cheque for Rs.39,229/- (Rupees Thirty nine thousand two hundred and twenty nine only) in favour of Dasari Chennakesavulu, who is the son of the petitioner, and the same wasdeposited for revalidation so as to hand over the same to the petitioner.

Heard the learned Standing Counsel for the respondent – Municipal Corporation.

In **P. Lakshmana Rao v. Executive Officer,** a Division Bench of this Court issued directions to be followed by Municipal authorities, Panchayat authorities and Revenue authorities for acquiring the land for public purpose. Having regard to the decision of the Division Bench, I have considered similar issue in a number of writ petitions and culled out various principles of law to be followed by the Government while acquiring/utilizing the private land for road widening. The principles were reiterated by my learned brother, Sri Justice B.Sudershan Reddy in **M.Madhavi Latha v. Rajendranagar Municipality**. The principles laid down by the Division Bench are as follows.

(1). Where a property is required for public purpose viz., widening of roads or for any other

purpose, the authorities straightaway cannot take law into their hands and jump into the premises, dispossess or evict the occupants or demolish the property.

(2). If the authorities concerned want to take action for eviction/dispossession of the occupants or demolition, they shall issue 60 days' prior notice notifying as to the nature of the property, the property to whom it belongs and the proposed action calling for explanation/objections, if any, from the occupants. On receipt of such objections, if there is any objection as to the ownership of the property, the authorities should determine the extent of encroachment or unauthorised occupation and also determine whether the property in question belongs to Government/any other local self Government or authority or the occupants and pass appropriate orders within three months from the date of receipt of the objections, after affording an opportunity of being heard to the occupants.

(3). In case where demolition of private property has already been made, the authorities shall determine the damages on the basis of the assessment to be made by the Engineer of the Roads and Buildings Department and disburse the amount of damages quantified forthwith.

(4). If the demolition is in respect of local bodies' Government property, the question of damages does not arise. In such an event, the occupant shall be entitled to remove the material used for the construction.

(5). In case of demolition of private property, the authorities concerned shall determine the loss caused to the occupants on the basis of the assessment to be made by the Engineer of R&B Department and on such assessment of damages, the concerned authorities shall take appropriate steps to disburse the amount quantified forthwith.

(6). If there is any claim for grant/assessment of the property, the concerned authorities shall consider the same in accordance with law taking into consideration the eligibility and the entitlement of occupants, after making enquiry and till such claim is decided, there shall be status quo obtaining as on today regarding the structures.

The writ petition is disposed of as above directing maintenance of status quo as on today regarding demolition of the petitioner's building. No costs.

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October 14, 2004. **V.V.S.RAO, J**

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To

1. The Commissioner, Guntur Municipal Corporation, Guntur.
2. The Town Planner, Guntur Municipal Corporation, Guntutr.
3. Two C.D. Copies.